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Paper No. 11
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Matsushita Electric Corporation of America

Serial No. 75/847,054

Morton Amster of Amster, Rothstein & Ebenstein for
Matsushita Electric Corporation of America.

Esther Borsuk, Trademark Examining Attorney, Law Office 112
(Janice O'Lear, Managing Attorney).

Before Chapman, Bucher and Bottorff, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

Matsushita Electric Corporation of America (a Delaware corporation) filed on November 12, 1999 an application to register on the Principal Register the mark PUREFLAT for "television monitors" in International Class 9.¹

The Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C.

¹ The application was originally based on applicant's assertion of a bona fide intention to use the mark in commerce on the identified goods. Applicant filed an Amendment to Allege Use which was accepted by the Examining Attorney in June 2001, and applicant's claimed date of first use and first use in commerce is October 26, 2000.

§1052(e)(1), on the ground that when applicant's mark is used on the goods identified in the application, it is merely descriptive thereof.

When the refusal was made final, applicant appealed to this Board. Both applicant and the Examining Attorney have filed briefs. Applicant did not request an oral hearing.

The Examining Attorney argues that the applied-for mark "PUREFLAT" is a combination of the words "pure" and "flat," which immediately describes a significant feature of the goods, namely, that the screens on applicant's television monitors are completely flat. In support of the refusal to register the Examining Attorney submitted (i) dictionary definitions of the terms "pure" and "flat"²; (ii) photocopies of excerpted stories retrieved from the Nexis database relating to "pure flat"³; and (iii) printouts of certain Web pages from the Internet, all showing references to "pure flat" television monitors.

² The Examining Attorney attached these dictionary definitions to her brief on appeal. We hereby take judicial notice of same. See *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). See also, TBMP §712.01.

³ Several of these excerpted stories are from foreign publications and were not considered in reaching our decision herein. See *In re Men's International Professional Tennis Council*, 1 USPQ2d 1917, 1918 (TTAB 1986).

The relevant portions of the definitions from The American Heritage Dictionary of the English Language (Third Edition 1992) are as follows:

"pure" (adjective) is defined as
"...6. Complete; utter: pure
folly...."; and

"flat" (adjective) is defined as "1.
Having a horizontal surface without a
slope, tilt, or curvature....," and
(noun) "A flat surface or part."

In the context of television monitors, the word "flat" immediately conveys information about the front surface of the screen. The following are examples of the excerpted stories retrieved from the Nexis database, showing use of the term "pure flat" in the context of perfectly flat screens (emphasis added):

HEADLINE: Flat Panels With Fat Prices
...Instead get a picture-tube display
with a flat-front pane of glass for
your computer or your TV. Called,
"natural flat," "**pure flat**," "flat
screen" and other such confusing
terms, these don't have the same big
curve on their front sides as on older
tubes. In fact, this is the second
generation of flattening, after some
preliminary work in the mid-'90s.
"Dayton Daily News," March 20, 2000;

HEADLINE: Thomson Unveils a Frugal
HDTV
...it will broaden its line to analog
models this year, ranging in screen
size from 20 inches to 36 inches.
...Sharp Electronics Corp. introduced
its 34N-WF5H **Pure Flat** HDTV Ready TV,

which will be available in March at the suggested retail price of \$4,999. "Electronic Media," January 10, 2000; and

HEADLINE: Compaq Revitalizes Professional Line CRTs⁴ with new FD Trinitron Monitors
...Virtually flat screen. The majority of CRTs today exhibit a visible range of curvature on the front glass, which results in geometric distortion of images on screen. The virtually flat screen of FD Trinitron, often referred to as "**pure flat**," provides a geometrically correct image and in many cases completely eliminates glare. The result is less distortion of the image on the screen, increasing comfort and productivity by reducing eyestrain, irritation and fatigue.
...
With viewing resolutions up to 1600 x 1200, 0.24 to 0.25mm variable aperture grille pitch and FD Trinitron **pure flat** tube, ... "M2 Presswire," October 26, 1999.

The Internet evidence shows that several different television manufacturers refer on their respective Web sites to "pure flat" in connection with televisions - including "Samsung Introduces Tantus Digital Ready Pure Flat Direct-View Television At 2000 CES [Consumer Electronics Show]," "Sharp 34N-WF5H Pure Flat Widescreen

⁴ The usage of CRT, an abbreviation for "Cathode Ray Tube," describes monitors long associated with television picture tubes, and increasingly associated with computer and/or video monitors. The Nexis excerpts make it clear that cutting edge technology is often used interchangeably among these various electronic devices.

HDTV Display," and "Hitachi Pure Flat Widescreen Rentals." Applicant's own Web site includes the following statement: "The Pure Flat Range of Televisions Employs Panasonic's own Technology Which is at the Cutting Edge of Picture Tube Technology."

We note that applicant's specimen of use is a photograph of the side of a carton containing a television, showing the words "Panasonic@," "PUREFLAT," "Color Television" (in three languages), and "T[Tau]"⁵ appearing thereon.

Applicant acknowledges that its "mark may consist of elements which, considered separately, could give rise to a finding of descriptiveness." (Brief, p. 4.) However, applicant contends that the mark, when considered as a whole, is only suggestive of a feature of a television monitor; and that the mark PUREFLAT "requires the consumer to expend considerable imagination in order to reach any conclusion about the nature of the goods." (Brief, p. 2.) Further, applicant argues as follows:

In the instant case, prospective customers encountering Applicant's PUREFLAT mark will not have a concrete idea about the specific nature of Applicant's product. For

⁵ It appears from the information of record that applicant uses the Greek letter "tau" [T] as a trademark in connection with a series of its high resolution monitors.

example, Applicant's product could consist of no more than a screen, like the screens used in movie theaters. Similarly, Applicant's product could consist of a flat screen on the face of a watch or a flat screen on a small, portable product similar to a make-up compact." (Brief, p. 3.)

Applicant submitted for the first time with its brief on appeal photocopies of some stories retrieved from the Nexis database "in which PUREFLAT is specifically used as a trademark as to Applicant's goods[s]"; and asserting that because there is now a "mixed bag" of articles of record, those submitted by the Examining Attorney are insufficient on which to find mere descriptiveness. (Brief, pp. 3-4.) Applicant's evidence and argument on this point is untimely under Trademark Rule 2.142(d); and the Examining Attorney objected thereto. The objection is well taken and is sustained. See TBMP §1207. Therefore, applicant's untimely evidence was not considered in reaching our decision. Even if it had been considered, it would not change the result herein.

The well-established test for determining whether a term or phrase is merely descriptive under Section 2(e)(1) of the Trademark Act is whether the term immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature

of the product or service in connection with which it is used. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.*, 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). The determination of mere descriptiveness must be made, not in the abstract, but rather in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

The question is not whether someone presented with only the term or phrase could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985).

We agree with the Examining Attorney that the term PUREFLAT immediately and directly conveys information about a significant feature of applicant's "television monitors."

Applicant's television monitors have completely flat screens, devoid of any curved surface area. The record shows that a flat surface instead of a curved surface on the television monitor improves the quality of the picture by reducing distortion of the image on the screen. As touted by applicant and its competitors, the word "pure" in this context might also have the ready connotation of "true" proportions and a "clear" picture. The commonly understood English meaning of the words "pure" and "flat," presented as "pureflat," will be readily understood by the relevant purchasers (the general public) as a completely flat television monitor providing a distortion-free image. This record establishes that whichever meaning of the term "pure" (either "completely" or "distortion-free"), the term "PUREFLAT" reinforces and hence describes a significant feature of the goods. The question is not, as applicant suggests, whether prospective purchasers of the goods sold under the mark PUREFLAT would know from the mark alone whether the goods are the size of a movie screen or a make-up compact.

As discussed above, the combination of these two words into one word does not create an incongruous or creative or unique mark. Rather, applicant's mark, PUREFLAT, when used on applicant's identified goods, immediately describes,

without conjecture or speculation, a significant feature of applicant's goods. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers and prospective customers of applicant's goods to readily perceive the merely descriptive significance of the term PUREFLAT as it pertains to applicant's television monitors. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE merely descriptive for potpourri); *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) [FIRSTIER (stylized) merely descriptive for banking services]; and *In re Copytele Inc.*, 31 USPQ2d 1540 (TTAB 1994) (SCREEN FAX PHONE merely descriptive of facsimile terminals employing electrophoretic displays).

Decision: The refusal to register the mark as merely descriptive under Section 2(e)(1) is affirmed.